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Supreme Court No. 97617-1
(Court of Appeals No. 78341-6-I)

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

v.

BENJAMIN BATSON,
Respondent.

BRIEF OF AMICI CURIAE KING COUNTY DEPARTMENT OF
PUBLIC DEFENSE, WASHINGTON ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS, PUBLIC DEFENDER ASSOCIATION, and
REAL CHANGE

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I. STATEMENT OF INTEREST

Amici Curiae are a diverse group of public defenders and organizations who advocate for people experiencing homelessness, including those who are required to comply with sex offender registration requirements under RCW 9A.44.130. Because of their advocacy for individuals experiencing homelessness who have registration obligations, Amici are familiar with the damaging effects registration has on individuals, families, and society. To mitigate the harm registration has on Amici's clients, Amici advocate for changes to registration requirements and now write to provide information that will aid the court's in this matter.

II. FACTUAL BACKGROUND

A. History of Sex Offense Registration

In the early 1990s, two incidents received significant media coverage and triggered widespread public support for the enactment of sex offense registration requirements. Following these two unique and particularly concerning criminal acts, registration became widespread across the nation. Amanda Y. Agan, *Sex Offender Registries: Fear without Function?* 54 The Journal of Law and Economics, 207, 218 (2011). This occurred despite the steady decline in the rate of sexual assaults, along with many other types of violent crime. *Id.*

The first major piece of legislation creating registration requirements was enacted in 1994 after the mother of an 11-year-old child, who had been abducted and killed in Minnesota in 1989, advocated for registration laws to be enacted. GovTrack, *Jacob Wetterling Crimes Against Children Registration Act*, October 11, 2018, <https://www.govtrack.us/congress/bills/103/hr324/summary>. More onerous registration and notification laws followed in 1996 after a high-profile kidnapping, rape, and murder of a young girl by a person who had been previously convicted of a sex offense. Carla Schultz, *The Stigmatization of Individuals Convicted of Sex Offenses: Labelling Theory and The Sex Offense Registry*, 2 Research Journal of Justice Studies and Forensic Science 63, 66-67 (2014).

B. Registration Does Not Reduce Already Low Recidivism Rates Among People Previously Convicted of Sex Offenses

Both before and after registration requirements were widely implemented, people convicted of sex offenses have consistently had lower rates of recidivism than those who are convicted of other crimes. Monica Robbers, *Lifers on the Outside: Sex Offenders and Disintegrative Shaming*, 53 International Journal of Offender Therapy and Comparative Criminology 5, 9 (2008). In Washington, the recidivism rate for sex offenses for people previously convicted of sex offenses is 2.7 percent and

their overall recidivism rate is lower than any other group convicted of felonies. Washington State Institute for Public Policy, *Sex Offenders in Washington State: Key Findings and Trends*, 1, 12 (2006). The nationwide recidivism rate for individuals convicted of sex offenses hovers somewhere below 15 percent, which is significantly lower than the 75 percent recidivism rate for those convicted of theft and similar crimes.¹ Robbers, *Lifers on the Outside* at 9. Nonetheless, there is widespread public perception that recidivism among people who were previously convicted of sex offenses is high. Jill Levenson, David D. Amora, and Andrea Hern, *Megan's Law and its Impact on Community Re-Entry for Sex Offenders*, 25 Behav.Sci.Law, 587 (2007).²

Sex offender registration has done nothing to change the recidivism rate. Virtually every study regarding sex offense registration and notification laws has come to the same stark conclusion: “the way the

¹ One longitudinal study of people convicted of sex offenses found the recidivism rate for sex offenses to be around 10 percent. Lawrence L. Bench and Terry D. Allen, *Assessing Sex Offense Recidivism Using Multiple Measures: A Longitudinal Analysis*, 93 The Prison Journal, 411, 418 (2013). Some studies have found even lower rates of recidivism, for example, in Iowa the recidivism rate for sex offenses was found to hold steady at 3 and 3.5 percent for the last several decades. Iowa Department of Human Rights, *The Iowa Sex Offender Registry and Recidivism*, 19 (2000).

² Suggestions to the contrary have largely been debunked. See Adam Liptak, *Did the Supreme Court Base a Ruling on a Myth?*, The New York Times, <https://www.nytimes.com/2017/03/06/us/politics/supreme-court-repeat-sex-offenders.html>.

United States criminal justice system currently handles sex offenders is impractical and ineffective.” Schultz, *Stigmatization*, *supra* at 76. This is because recidivism among people previously convicted of a sex offense is very low and registration does not help. Agan, *Fear without Function*, *supra* at 208 (“Rates of sex offenses do not decline after the introduction of a registry or public access to a registry via the Internet[sic].”). Community notifications are equally ineffective at addressing this goal. *Id.*

When states started enacting sex offender registration laws, there was a period when some states had registries and others did not. *Id.* The different practices across states allowed researchers to compare states during a similar period to determine whether sex offender registration impacted recidivism. *Id.* In a comprehensive study, a University of Chicago researcher examined whether rates of sex offenses generally decreased and whether rates of recidivism among those previously convicted of sex offenses declined. *Id.* The results were clear:

The national panel data do not show a significant decrease in the rate of rape or the arrest rate for sexual abuse after implementation of a registry or access to the registry via the Internet. The [Bureau of Justice Statistics] data that tracked individual sex offenders after their release in 1994 do not show that registration had a significantly negative effect on recidivism. And the [Washington D.C.] crime data do not show that knowing the locations of sex offenders by census block can help predict the locations of sexual abuse.

Id. at 235.

Many other studies have reached similar results. Washington State Institute for Public Policy, *Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Literature*, p. 3 (2009) (“we performed a meta-analysis and found no statistically significant difference in recidivism rates for either sex offenses or total offenses.”); Michael Lasher and Robert McGrath, *The Impact of Community Notification on Sex Offender Reintegration: A Quantitative Review of the Research Literature*, 56 *International Journal of Offender Therapy and Comparative Criminology*, 6 (2012) (discussing several other meta-analysis studies and finding that “overall, these studies indicate that registration and community notification appears to have little if any effect on sex offender recidivism.”); Iowa Department of Human Rights, *The Iowa Sex Offender Registry and Recidivism*, p. 19 (2000) (finding no statistically significant difference in sex related recidivism for pre- and post-registry Iowans – 3.5 percent pre-registry v. 3.0 percent post-registry); Washington State Institute for Public Policy, *A Study of Offender Characteristics and Recidivism*, p. 19 (1995) (finding that registration and community notification had no effect on recidivism); Joshua Vaugh, *2016 Crime Review: A Look at the Effectiveness of Sex Offender Registries*, February 13, 2017, https://cumberlink.com/news/local/closer_look/digital_data/crime-review-

a-look-at-the-effectiveness-of-sex-offender/article_a9923f58-9d65-5379-9670-eb08ad9d6620.html (“At no time in that more-than-20-year time frame did the rate of rape show a significant change coinciding with implementation of a new sex offender policy”); Elizabeth Letourneau, Jill Levinson, Dipankar Bandyopadhyay, Debajyoti Sinha and Kevin Armstrong, *Evaluating the Effectiveness of Sex Offender Registration Policies for Reducing Sexual Violence against Women*, Medical University of South Carolina (2010) (“Of note, registration status did not influence recidivism”).

In fact, some researchers found the opposite to be true, that notification laws may increase recidivism among people who were previously convicted of a sex offense thereby reducing community safety. J.J. Prescott and Jonah Rockoff, *Do Sex Offender Registration and Notification Laws Affect Behavior?*, 54 *Journal of Law and Economics* 161 (2011) (“We find notification may actually increase recidivism”). This finding is not surprising given that registration laws make the lives of people who are required to register incredibly difficult and undermines social ties that would discourage them from engaging in other criminal activities. Other research has confirmed this finding:

Stigmatization results in the subsequent transformation of social status to one that is below the rest of society... It follows that the stigma of labeling transforms the

individual's self-conception from one of a normal being to one of a deviant. The label not only convinces society that the individual is deviant, but essentially convinces the individual that he is nothing more than a criminal.

Schultz, *Stigmatization*, *supra* at 69; *see also* Richard Zevitz and Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact on Wisconsin*, National Institute of Justice at 9 (2000) (“Many [offenders] drew from their own embittered experience with community notification to suggest that the tremendous pressure placed on sex offenders by public and the media would drive many of them back to prison.”).

These findings are supported by increases in non-sex offense criminal activity among registrants. A University of Chicago study, while finding no statistical evidence that registration reduced recidivism for sex offenses, found that registration could result in an increase in other types of criminal offenses. Agan, *Fear without Function*, *supra* at 224. Iowa had higher rate of misdemeanor convictions for those with registration requirements. *Iowa Sex Offender Registry*, *supra* at 19.

C. Washington's Sex Offense Registration Requirements

Registration requirements in Washington are two-tiered and hinge on whether a person has access to stable housing. Washington's registration scheme also requires widespread public notification—including the name

of the registrant, their photograph, their address, and information about their criminal convictions.

1. Registrants with Stable Housing

People with a fixed address who have a registration obligation must register with the county sheriff where they live within three days of sentencing or release from confinement. RCW 9A.44.130(4)(a)(i). If they move or travel out of the county, they are required to notify the sheriff within three days. RCW 9A.44.130(4)(a)(viii), (5)(a). Depending on how they are classified by Washington State Patrol, this information may be broadly distributed to the public. RCW 4.24.550(1).

2. Registrants Experiencing Housing Instability

In Washington, people who are housing insecure and have registration requirements must report in person weekly to a location designated by local law enforcement. RCW 9A.44.130(6)(b). In addition to appearing at a location designated by law enforcement, they must provide an accurate accounting of all the places they have been for the last week. *Id.* Failure to make weekly check-ins results in a felony charges for failure to register. RCW 9A.44.132 (“A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any

of the requirements of RCW 9A.44.130.”). Further, when an individual subject to registration lacks a fixed address, this lack of address can be used as a basis to increase their “risk level,” which may result in stricter registration requirements including public notice and dissemination of an individual’s personal information on the internet. *Id.* In addition, people tiered at level 1 who lack a fixed address are automatically listed on the public registry. RCW 9A.44.132(5)(a). This means that every person who registers as lacking a fixed address has their information published. In recognition of the onerousness of these requirements, the State is required to help developmentally delayed individuals register.³

Washington has one the most arduous sex offense registration schemes in the country for those who lack stable addresses. Washington’s requirements for registration, especially requirements imposed on those without stable housing, go well beyond registration requirements imposed in other jurisdictions—including registration requirements that have been deemed unconstitutionally punitive. *State v. Boyd*, 1 Wn. App.2d 501, 525, 408 P.3d 362, 375 (2017) (Becker, J. dissenting).

³ These individuals can still, nonetheless, be convicted of failure to register even if the State provides no help. RCW 9A.44.130(4)(a)(i).

3. Community Notification

All registrants, those with secure housing and those without, are subject to disclosure of significant amounts of personal information, and there are very few limits on how that information can be distributed. Law enforcement agencies can release information to the public if it is “relevant and necessary to protect the public and counteract the danger created by the particular offender.” RCW 4.24.550(1). In practice, information regarding people classified as Level I sex offenders—the least dangerous per law enforcement—is released to the registrant’s school, law enforcement agencies, and witnesses and victims from their criminal case.⁴ RCW 4.24.550(3)(a). In addition, their identities can be revealed to anyone who seeks such information pursuant to Washington’s public records act. *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363, 374 P.3d 63 (2016).

Information about people classified as Levels II and III, whom law enforcement believe pose a higher risk of reoffending, is subject to wider distribution.⁵ For people classified as Levels II or III, registration will result

⁴ This statute requires that “A sex offender shall be classified as a risk level I if his or her risk assessment and other information or factors deemed relevant by the law enforcement agency indicate he or she is at a low risk to sexually reoffend within the community at large.” RCW 4.24.550(6)(b).

⁵ A sex offender shall be classified as a risk level II if his or her risk assessment and other information or factors deemed relevant by the law enforcement agency indicate he or she is at a moderate risk to sexually reoffend within the community at large. A sex offender

in the online public distribution of their identity, charge, photograph, and address or, if they are without stable housing, an accounting of where they have recently been. RCW 4.24.550(3)(b) and (c). To distribute this information broadly, Washington has created an online database that is searchable by name, address, city, and compliance status. *See* Washington Association of Sheriffs and Police, *Offender Search*, <http://www.icrimewatch.net/index.php?AgencyID=54528>. This database makes it easy to see where people classified as Levels II and III live. It also provides email notifications to the public about people on the registry. *Id.*

4. Relief from Registration

Relief from these obligations is arduous. Those convicted of class C felony sex offenses or misdemeanors must wait ten years before they are eligible for relief. RCW 9A.44.140(3). Those convicted of Class B felonies must wait 15 years, and those convicted of Class A felonies are ineligible for relief. RCW 9A.44.140(1)-(2). Any subsequent felony or sex offense conviction, including a felony failure to register, restarts the clock.⁶ Young

shall be classified as a risk level III if his or her risk assessment and other information or factors deemed relevant by the law enforcement agency indicate he or she is at a high risk to sexually reoffend within the community at large.” RCW 4.24.550(6)(b).

⁶ RCW 9A.44.030(48)(v) (defining sex offense to include a second felony conviction for failure to register as a sex offender); RCW 9A.44.128(3) (defining “disqualifying offense” to include any felony or sex offense for purposes of relief from the registration requirement under RCW 9A.44.140).

people convicted of sex offenses must meet all registration requirements for between two and five years before they are eligible for registration relief. RCW 9A.44.143.

5. Registration Requirements in King County are Burdensome for People Experiencing Homelessness

For people with registration requirements in King County, there are limited opportunities to do so. People who must register and have fixed addresses can do so by sending a letter to the courthouse in downtown Seattle. King County, Sex Offender Registration Information, <https://www.kingcounty.gov/depts/sheriff/sex-offender-search.aspx> (2019). Those without a fixed address, on the other hand, must appear—in person—at the King County Administration building downtown every week. *Id.* The hours that individuals can check-in for registration in person are limited to Monday through Thursday, 8:00 am-1:00 pm and 2:30-3:30 pm. *Id.* From parts of King County, this may take over 2 hours and several bus transfers. Google Maps, *Directions from Enumclaw to Administrative Building*, <https://www.google.com/maps/dir/Enumclaw,+WA+98022/King+County+Administration,+500+4th+Ave,+Seattle,+WA+98104>.

III. ARGUMENT

Sex offender registration does not reduce sex offense recidivism, nor does it protect Washingtonians. Instead, registration creates an ongoing disability for those subjected to it by stigmatizing people convicted of sex offenses, compromising reintegration into society, and undermining attempts to find work, housing, and obtain public benefits. Registration is also particularly arduous for those experiencing homelessness and often results in violence to registrants and their families.

While there is a lack of empirical evidence demonstrating that registration and notification laws protect the community, the “costs have been well documented[.] A number of scholars have established the financial, physical, and psychological damage to registered sex offenders and their families.” Prescott, *Do Sex Offender Registration and Notification Laws Affect Behavior?*, *supra* at 192. It also costs governments money and removes value from communities.⁷ *Id.* Registration also results in psychological harm to uninvolved community members. *Id.* Registration

⁷ Law enforcement offices can incur substantial labor and capital costs through creating and enforcing registries. Michael Lasher and Robert McGrath, *The Impact of Community Notification on Sex Offender Reintegration: A Quantitative Review of the Research Literature*, 56 *International Journal of Offender Therapy and Comparative Criminology* 6, 9 (2012). Establishing and staffing locations for registration also requires significant resources. *Id.* Mental health professionals also believe the requirement to register may do harm, and not good to the broader community. *Id.* The value of homes near persons with public registration requirements decline by \$5,500 dollars. Agan, *Fear Without Function* at 207.

makes reintegration nearly impossible for people subject to registration, who are already a vulnerable population.⁸ Due to this construing Washington's registration requirements broadly undermines individual and community safety.

A. Registration Compromises Reintegration into Society

By any metric, sex offender registration makes it harder for individuals to reintegrate into society after they have served their time. In one survey, people subject to registration requirements cited registration laws as one of the leading difficulties in reintegration. Zevitz, *Sex Offender Community Notification: Assessing the Impact on Wisconsin* at 9. Twenty-nine out of thirty respondents stated that community notification adversely affected their transition back into society. *Id.* In almost every study of the effect of registration, registrants report losing jobs, having to leave their homes, and experiencing harassment or threats to them or their family due to community notifications. Michael Lasher and Robert McGrath, *The Impact of Community Notification on Sex Offender Reintegration: A Quantitative Review of the Research Literature*, 56 *International Journal of Offender Therapy and Comparative Criminology* 6, 16 (2012).

⁸ About 25 percent have substance abuse issues, 14 percent are mentally ill and 11 percent have a developmental disability. Robbers, *Lifers on the Outside* at 9.

Registration makes it harder to find and maintain a job. In one study, 27 percent of registrants surveyed reported losing their job because of the registration requirement. Robbers, *Lifers on the Outside* at 10. Most studies suggest that job opportunities are limited for at least half of registrants. Jill Levenson and Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 American Journal of Criminal Justice 54, 55 and 62 (2009). And eighty-two percent of the families of people subject to registration requirements report financial hardship as a result of the registration requirement. Lasher, *The Impact of Community Notification on Sex Offender Reintegration*, *supra* at 10. Further, individuals convicted of sex offenses are frequently unable to obtain public benefits. Robbers, *Lifers on the Outside* at 11 (2008).

B. Registration Makes Those Who Must Register and Their Families Targets of Stigma and Violence

People with registration requirements are regularly “humiliated in their daily lives, ostracized by neighbors and lifetime acquaintances, and harassed or threatened by nearby residents or strangers.” Zevitz, *Sex Offender Community Notification: Assessing the Impact on Wisconsin* at 9. The loss of close personal relationships due to registration is frequent and one of the most difficult aspects of reintegration for people released after serving a sentence for a sex offense. *Id.* In some surveys, almost one tenth

report being the target of vigilante attacks. Lasher, *The Impact of Community Notification on Sex Offender Reintegration*, *supra* at 10. Approximately half of respondents in another study reported fearing for their safety because of community notifications. Jill Levenson, David D. Amora, and Andrea Hern, *Megan's Law and its Impact on Community Re-Entry for Sex Offenders*, 25 Behav.Sci.Law 587 (2007).

These fears have already been realized in Washington State. Lexi Pandell, *The Vigilante of Clallam County*, The Atlantic, December 4, 2013, <https://www.theatlantic.com/national/archive/2013/12/the-vigilante-of-clallam-county/281968/>. In Clallam County, a man was arrested after he murdered two men that he found on the sex offender registry. *Id.* At the time of his arrest, he had a list of six additional names. *Id.* Some supporters from the community came to his sentencing and yelled: "Way to go!" *Id.* Online, people hailed him as a hero. *Id.*

Further, family members of individuals whose personal information and criminal history are posted on the registry are also frequently targeted and subjected to violence and harassment that is directly connected to the registration requirement. In one survey, 44 percent of family members of registrants had been threatened or harassed. Jill Levenson and Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 American Journal of Criminal Justice 54, 62 (2009); *see also*

Zevitz, *Sex Offender Community Notification: Assessing the Impact on Wisconsin* at 9 (finding that two-thirds of registrants found registration unfavorably affected their family). In another poll, 22 percent of family members reported suffering property damage arising from the public registration requirements of their loved one. *Id.* Seven percent of family members reported being physically assaulted. *Id.* Children of people subject to registration requirements are frequently harassed at school, including experiencing differential treatment by teachers. *Id.* at 63.

Notably, none of this would be possible without community notification. A criminal history check may reveal some information, but registry notifications and the ability to search a specific location for individuals on the registry, make this information publicly available in a way that was not possible when registries were initially instituted.

Given these challenges, it is understandable that many people who must register end up with strained or failed family relationships or choose to live away from their families in order to protect them. However, without the support of family and friends, individuals who must register slip further to the margins of society.

C. Registration Increases the Likelihood of Homelessness

Housing is extremely scarce for those convicted of sex offenses in Washington, even those eligible for public benefits. Melanthia Mitchell, *Sex*

Offenders Find Housing Scarce, Seattle PI, July 21, 2003, <https://www.seattlepi.com/news/article/Sex-offenders-find-housing-scarce-1119869.php>. This stigma is so pervasive that even state senators have stepped in to prevent sex offenders from being allowed public accommodations in adult family homes. Alison Grande, *Local Leaders Fight Plan to Put Sex Offenders in Adult Family Homes*, KIRO 7, August 9, 2018 <https://www.kiro7.com/news/south-sound-news/local-leaders-fight-plan-to-put-sex-offenders-in-adult-family-homes/809973866/>. As a result, the homelessness rate in some counties in Washington among registrants is as much as 40 percent. Devin Perez, *Data Shows Forty Percent of Sex Offenders in Chelan County are Homeless*, June 17, 2019, http://www.ifiberone.com/news/data-shows-forty-percent-of-sex-offenders-in-chelan-county/article_29296b3a-916d-11e9-a787-dfa746308a16.html.

In one study, 35 percent of registrants reported having to leave their home because their landlord or community found out about their registration status. Robbers, *Lifers on the Outside* at 10. Failure to find housing causes economic stress and reduces treatment options for registrants. *Id.* Probation officers even acknowledge that it can take significantly longer to find housing for those forced to register. Zevitz, *Sex Offender Community Notification: Assessing the Impact on Wisconsin* at 8.

Family members also reported difficulty finding housing due to their family member's status on the registry. Jill Levenson and Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 *American Journal of Criminal Justice* 54 (2009). This frequently results in people subject to registration requirements relocating to the poorest and most under-resourced neighborhoods. Karen E. Gordon, *The Registered Sex Offender Population as a Marker of Social Disorganization*, *The Howard Journal of Crime and Justice* 52, No. 5, 527-542 (2013).

Without a job, alienated from family and members of their community, and unable to access housing, many individuals convicted of sex offenses experience homelessness. As registrants are pushed into homelessness, the demands and difficulty of registration requirements increase, makes it even harder to reintegrate.

D. Registration Requirements for Homeless Registrants are Arduous

In addition to the many challenges faced by people experiencing housing insecurity, those subject to registration requirements must check in every week. In King County this means travelling to downtown Seattle, even when what little support a person has may be in a far-flung corner of the county, with limited access to downtown. With little community support, few real prospects of a job, and limited housing resources, a

registrant, who is housing insecure, is not likely to travel to downtown Seattle on a weekly basis during the narrow windows of time that the Sheriff's Office has designated for registration check-in.

Unsurprisingly, many people without stable housing cannot meet this obligation and end up with additional criminal charges related to their failure to meet their registration requirements. Almost 20 percent of people required to register in Washington have been convicted of failure to register. Washington State Institute for Public Policy, *Sex Offenders in Washington State: Key Findings and Trends* (2006). As a result, people with registration requirements who are houseless face a never-ending cycle of imprisonment, reconviction, and release, only to start again, not because of a new crime but because they cannot meet the requirements placed upon them by the registry. *See Boyd*, 1 Wn.App.2d at 525.

IV. CONCLUSION

Sex offender registration is onerous for all, but particularly burdensome for those experiencing homelessness. Registration stigmatizes and isolates individuals convicted of sex offenses, does not reduce recidivism for sexual offenses, and, ultimately, undermines registration's purported purpose of promoting community safety by subjecting those with registration requirements and their loved ones to public humiliation and possible violence.

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Respectfully submitted,

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